

LEGRO et al.
SN 10/765,475**REMARKS**

Upon entry of the foregoing amendments, claims 1-5 and 9-13 are pending. Claims 9-11 have been withdrawn. New claims 10-13 have been added. Claim 1 is amended to clarify the inventive subject matter of the present application. Basis for this amendment is found in the present specification at page 3, lines 27-34. Accordingly, these amendments do not introduce any new subject matter within the meaning of 35 U.S.C. §132 and entry of the amendments is respectfully requested.

REJECTION OF CLAIMS 1-8 UNDER 35 U.S.C. §103(a)

The Examiner has rejected claims 1-8 under 35 U.S.C. §103(a) as being unpatentable over Canadian Patent No. CA 1,143,651 to Lemon in view of U.S. Patent No. 2,656,649 to Ostier.

Applicants respectfully traverse this rejection. The Examiner has failed to establish a prima facie case of obviousness. In the first instance, the combination of references fails to teach each and every limitation of the present claims. Furthermore, it has not been demonstrated that one of skill in the art would have been motivated to create the method of protecting a germinating seed with a pesticide, characterized by seed-containing pellets and pesticide-containing pellets sown individually and at the same time and wherein the pesticide-containing pellet comprises a killed seed core surrounded by pesticide and wherein the seed is killed by gamma waves or microwaves using the teachings of Lemon and Ostier.

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In contrast to the claims of the present application, the primary reference, Lemon, teaches granules containing bendiocarb, a pesticide. These granules may be produced by adhering the bendiocarb to a "walnut shell, peanut shell, wood chips or especially corn cob grit". See Lemon page 4, lines 16-25. Lemon contains no express or implied teaching that the core may be a killed seed.

The secondary reference, Ostier, fails to remedy the deficiencies of Lemon. Specifically, Ostier relates generally to seed coatings rather than pesticide-containing pellets, let alone pesticide-containing pellets having a killed seed core.

Therefore, the combination of references fails to teach either expressly or impliedly each of the limitations as presently claimed in claims 1-5 and 9-13 of the application. Accordingly, a prima facie case of obviousness has not been established.

Additionally, it has not been demonstrated that there would have been a reasonable expectation of success for one of skill in the art to take the bendicarb granules of Lemon and combine them with the general seed coatings of Ostier to arrive at the presently claimed invention. As such, a prima facie case of obviousness has not been established.

As such, Applicants respectfully request the Examiner to reconsider and withdraw this rejection to claims 1-5 and 9-13.

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SN 10/765,475**CONCLUSION**

Applicants greatly thank the Examiner for the interview of June 9, 2005, as well as the Examiner's subsequent calls to the attorney of record to advise of the status of this application.

In view of the foregoing, applicants respectfully request the Examiner to reconsider and withdraw the rejection to claims 1-8 pending in this application.

If the Examiner has any questions or wishes to discuss this matter, the Examiner is welcomed to telephone the undersigned attorney.


Respectfully submitted,

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